interfering with the learned Judge's decision. In the result, we allow this appeal with costs here and below. The order of the High Court is set aside and the suit shall now be set down for an early trial. As the parties have, at the outset of the present appeal, agreed that the decision here would bind Rayuan Sivil No. 02-81-93 and Rayuan Sivil No. 02-90-93, we accordingly order that both the cases be similarly set down for trial. Refund of the deposit to the appellant.

YIP SHOU SHAN

v.

MAJLIS PEGUAM

SUPREME COURT, KUALA LUMPUR
TAN SRI DATUK AMAR HAJI MOHD JEMURI BIN SERJAN CJ (BORNEO),
TAN SRI DATUK EDGAR JOSEPH JR. SCJ,
TAN SRI DATO' HJ MOHD EUSOFF BIN CHIN SCJ
[CIVIL APPEAL NO. 02-161-94]
23 MAY 1994

LEGAL PROFESSION: Appellant refused a Sijil Annual for the year 1994 - Accountant's Report of appellants previous firm showing discrepancies - Whether Bar Council can insist on a clean Accountant's Report - Consideration of s. 32 of the Legal Profession Act 1976 - Duties of the Bar Council under the said section - Whether appellant exempted from delivery of an Accountant's Report - Whether appellant's case falls within paragraph (2) of rule 6 of the Accountant's Report Rules 1978.

On 1 October 1990 the plaintiff left the partnership of the firm of M/s. Yip Yeo and Nasrim (plaintiff's previous firm) and commenced his own practice under the name and style of Messrs. Peter Yip and Yong. For the year 1990 the accounts of the plaintiff's previous firm had not been resolved and no Accountant's Certificate could be issued because of unfavourable comments made therein by the Accountants. The plaintiff had been issued with a Sijil Annual in respect of the years 1992 and 1993 but they were issued on certain conditions and pending the completion of the audit of the plaintiff's previous firm. When the plaintiff applied for issuance of the Sijil Annual for 1994, it was refused.

The plaintiff contended that the Bar Council cannot refuse to issue the Sijil Annual as this would amount to suspending the advocate and solicitor concerned from practice which was the prerogative of the Chief Justice. The other question that arose was whether the plaintiff was entitled to an exemption from delivery of an Accountant's Report under rule 6 of the Accountant's Report 1978.

Held:

[1] Section 32 of the Act imposes a duty on the Bar Council to process and scrutinise every application for a Sijil Annual. It is the Bar Council's paramount duty to ensure that only an honest, trustworthy, fit and proper advocate

and solicitor should be allowed to practise. Any act of dishonesty on the part of an advocate and solicitor would bring the Bar Council and the legal profession into disrepute. The issuance of a Sijil Annual by the Bar Council is its recommendation to the Registrar of the High Court that such advocate and solicitor is a fit person to be issued a Practising Certificate under s. 29 of the Act.

[2] If the Bar Council finds that an advocate and solicitor has failed to keep proper accounts of all moneys received by his firm and therefore he cannot deliver a clean Accountant's Report, the Bar Council is entitled to refuse to issue a Sijil Annual and consequently will not recommend to the Registrar for the issuance of a Practising Certificate to the advocate and solicitor concerned.

[3] It is, therefore, clearly misconceived to interpret the role of the Bar Council as merely a rubber-stamping process, it having no discretion to refuse to issue a Sijil Annual in circumstances where clearly it should not be issued in the public interest. To agree with the appellant's argument would render s. 34 otiose in its application to s. 32 of the Act, bearing in mind that s. 32 is expressly subject to s. 34 of the Act.

[4] On the facts, the Bar Council had acted fairly in this case by refusing to issue the Sijil Annual to the appellant for the year 1994 as long as the appellant failed to submit an Accountant's Report showing that he had kept his accounts in accordance with the Solicitor's Account Rules 1978.

[5] The Bar Council was also correct in refusing to give an exemption from delivery of an Accountant's Report under rule 6 of the Accountant's Report Rules 1978 because the appellant could not establish that his case comes within any of the matters enumerated under paragraph (2) of rule 6 and also because the defeciency in the clients' accounts is quite substantial, notwithstanding that no clients of the appellant's former firm had made any complaints.

Obiter dicta:

An advocate and solicitor is in a position of a trustee *vis-a-vis* his client's money and must therefore produce a clean Accountant's Report in respect of all monies handled by any office of his partnership during any period which he is a partner. The Bar Council is not concerned with the internal financial and other arrangements between partners *inter-se*. It is up to every partner to ensure that the partnership accounts are in order at all times, in particular before leaving the partnership or before the partnership is wound up.

[Appeal dismissed with costs].

[Ed. Note: The High Court decision of this case was reported in [1994] 2 CLJ 466]

[Bahasa Malaysia Translation of Headnote]

PROFESION UNDANG-UNDANG: Perayu tidak diberi Sijil Tahunan bagi tahun 1994 - Laporan Akauntan mengenai firma perayu yang dahulu menunjukkan beberapa perbezaan - Samada Majlis Peguam boleh menggesa untuk suatu Laporan Akauntan yang bersih - Pertimbangan s. 32 Akta Profesion Undang-Undang 1976 - Kewajipan Majlis Peguam dibawah seksyen tersebut - Samada perayu dikecualikan daripada menyampaikan suatu Laporan Akauntan - Samada kes perayu tergolong di bawah perenggan (2) kaedah 6, Kaedah-Kaedah Laporan Akauntan 1978.

Pada 1 Oktober 1990 plaintif telah meninggalkan perkongsian dalam firma Tetuan Yip Yeo dan Nasrim (firma dahulu plaintif) dan memulakan amalannya sendiri di bawah nama gelaran Tetuan Peter Yip dan Yong. Bagi tahun 1990 akaun firma lama plaintif tidak dikemaskinikan dan tiada Sijil Perakuan Akauntan dapat dikeluarkan kerana komen yang tidak baik yang dibuat oleh Akauntan dalam laporannya. Sijil Tahunan telah dikeluarkan kepada plaintif bagi tahun 1992 dan 1993, tetapi ianya dikeluarkan dengan beberapa syarat dan sementara menanti penghabisan audit akaun firma dahulu plaintif. Apabila plaintif memohon untuk pengeluaran Sijil Tahunan bagi tahun 1994, ia telah ditolak.

Plaintif mengatakan bahawa Majlis Peguam tidak boleh melarang plaintif dari mendapat Sijil Tahunan sebab ini akan merupakan melarang peguambela dan peguamcara berkenaan dari menjalankan amalan dimana kuasa tersebut hanya diberi kepada Hakim Besar. Soalan lain yang timbul dalam rayuan ini adalah samada plaintif berhak mendapat pengecualian daripada mengemukakan Lapuran Akauntan dibawah Kaedah 6, Kaedah-kaedah Lapuran Akauntan 1978.

Diputuskan:

[1] Seksyen 32 Akta tersebut mewajibkan Majlis Peguam memproses dan memeriksa dengan teliti setiap permohonan untuk Sijil Tahunan. Adalah menjadi kewajipan utama Majlis Peguam untuk memastikan bahawa hanya Peguambela dan Peguamcara yang jujur, boleh diharap, layak dan wajar sahaja dibenarkan untuk menjalankan amalan. Sebarang tindakan ketidakjujuran dipihak Peguambela akan membawa kepada Majlis Peguam dan profesion undang-undang mendapat nama buruk. Pengeluaran Sijil Tahunan oleh Majlis Peguam adalah pengesyorannya kepada Pendaftar Mahkamah Tinggi bahawa Peguambela dan Peguamcara yang sedemikian ialah seorang yang layak untuk diberikan Sijil Perakuan Amalan di bawah s. 29 Akta tersebut.

[2] Jika Majlis Peguam mendapati bahawa seseorang Peguambela dan Peguamcara tersebut telah gagal untuk menyimpan akaun yang sepatutnya akan segala wang yang diterima oleh firmanya dan dengan itu ia tidak dapat mengemukakan Laporan Akauntan, Majlis Peguam adalah berhak untuk enggan mengeluarkan Sijil Tahunan dan berikutan dengan itu tidak akan mengesyorkan kepada Pendaftar bagi pengeluaran Sijil Perakuan Amalan kepada Peguambela dan Peguamcara yang berkenaan itu.

[3] Oleh yang demikian, adalah tersalahtanggap untuk mentafsirkan bahawa peranan Majlis Peguam hanya sebagai suatu proses pensetemen dan tidak mempunyai budibicara untuk enggan mengeluarkan Sijil Tahunan dalam keadaan di mana jelas bahawa ia tidak harus dikeluarkan demi kepentingan umum. Bersetuju dengan penghujahan perayu akan membuatkan s. 34 sebagai lewah dalam pemakaiannya kepada s. 32 Akta tersebut, dengan mengambil ingatan bahawa s. 32 adalah tertakluk dengan nyatanya kepada s. 34 Akta tersebut.

[4] Diatas fakta-fakta, Majlis Peguam telah bertindak dengan adil dalam kes ini apabila enggan mengeluarkan Sijil Tahunan kepada perayu bagi tahun 1994 selagi perayu gagal mengemukakan Laporan Akauntan yang menunjukkan bahawa beliau menyimpan akaunnya menurut Kaedah-kaedah Akaun Peguamcara 1978.

[5] Majlis Peguam juga betul apabila enggan mengecualikan pengemukaan Laporan Akauntan di bawah kaedah 6, Kaedah-kaedah Laporan Akauntan 1978 kerana perayu tidak dapat membuktikan yang kesnya tergolong dalam mana-mana perkara yang dinamakan di bawah perenggan (2) kaedah 6 dan juga kerana perbezaan dalam akaun klien adalah agak tinggi, meskipun tiada klien dari firma dahulu perayu membuat sebarang pengaduan.

Obiter dicta:

Seorang Peguambela dan Peguamcara itu berada dalam kedudukan sebagai pemegang amanah *vis-a-vis* wang kliennya dan oleh itu mestilah mengemukakan segala wang yang dikendalikan oleh perkongsiannya sepanjang tempoh beliau menjadi pekongsi. Majlis Peguam tidak mengambil berat mengenai kewangan dalaman dan lain-lain aturan diantara pekongsi. Ia adalah kewajipan setiap pekongsi untuk menentukan bahawa akaun perkongsian adalah betul pada setiap masa, lebih-lebih lagi pada waktu berpecah dari perkongsian atau sebelum perkongsian tersebut digulung.

[Rayuan ditolak dengan kos].

[Nota Ed: Keputusan Mahkamah Tinggi berhubung dengan kes ini dilaporkan dalam [1994] 2 CLJ 466].

Legislation referred to:

Accountant's Report Rules 1978, r. 6
Legal Profession Act 1976, ss. 29, 32(1)(a), (c), (2), 34(1), 79, 88A(1)(a), (c)
Solicitors' Account Rules 1978

For the appellant - G. Sri Ram (Benjamin Yen with him); M/s. Liza Chan & Co.
For the respondent - Haji Sulaiman; M/s. Zain & Co.

JUDGMENT

Hj Mohd Eusoff Bin Chin SCJ:

The appellant was admitted as an advocate and solicitor of the High Court on 17 November 1975. The Bar Council (respondent) had refused under s. 32 of the Legal Profession Act 1976, (hereinafter the Act), to issue a Sijil Annual for the year 1994.

Under s. 29 of the Act, the Registrar of the High Court will not issue a Practising Certificate to an advocate and solicitor unless the advocate and solicitor submits to the Registrar the last Sijil Annual issued to him by the Bar Council.

Under s. 32 of the Act, the Bar Council is empowered to issue a Sijil Annual to an advocate and solicitor if his application complies with the requirements of that section. One of the requirements is that the advocate and solicitor must deliver with his application an Accountant's Report prepared in accordance with s. 79 of the Act.

It was in 1985 when the appellant went into partnership with Margaret Yeo Eng Hong and Nasrim b. Dato' Sallleh to establish a law firm called Yip Yeo and Nasrim in Petaling Jaya with a branch office in Kuala Lumpur. On 30 September 1990 the appellant left his firm, and practised under the name of Peter Yip & Yong in Petaling Jaya.

In 1991 the appellant applied for a Sijil Annual for 1992. On 22 November 1991 the Bar Council asked the appellant for the Accountant's Report of Yip Yeo and Nasrim in respect of their Petaling Jaya and Kuala Lumpur offices for the period 1 January 1990 to 30 September 1990. The appellant replied that since he had left his former firm, he had no control over the auditing of the firm, and that his former partners should be responsible for the finalisation of the accounts of that firm. The Bar Council wrote to the appellant and his former partners on 6 December 1991 advising them to meet and resolve all outstanding issues so that a clean Accountant's Report could be issued to enable them to obtain their Sijil Annual for 1992.

Following further correspondence, the appellant, Margaret Yeo and their auditor Christopher Chooi appeared before the Sijil Annual Committee of the Bar Council on 15 January 1992 to give their views. Margaret Yeo said she was responsible only for the running of the Kuala Lumpur office of the firm and could produce the accounts of that office but was unable to produce the accounts for the Petaling Jaya office over which she had no control and the appellant was not co-operative. At the meeting, the committee was informed that an accounts clerk of the firm had paid in some of the clients' monies. Their auditor told the committee that with the files made available to him, he still could not reconcile a figure amounting to RM341,095.30.

The respondent decided that the appellant be given up to 29 July 1992 to submit the Accountant's Report. However, the appellant required more time, and the date was extended to 31 December 1992. The appellant and Margaret Yeo agreed that auditors be appointed by the Bar Council to examine the the accounts of the firm. Abu Bakar Rajuddin & Co was appointed as independent auditors for that purpose. The auditors asked for three months' extension beyond 31 December 1992. Meanwhile the Bar Council decided, in the circumstances, to issue the Sijil Annual for the years 1992 and 1993 to the appellant pending the production of the Accountant's Report.

There was no progress on the auditors' work, and the Bar Council agreed to the appointment of another firm of accountants Messrs. Monteiro and Heng who started work in July 1993, and they were given up to 31 December 1993 to finish their report.

On 18 November 1993 the appellant made an application for the year 1994.

On 30 December 1993, the Bar Council received Messrs. Monteiro and Heng's report on the audit of the appellant's former firm at the Petaling Jaya office showing Clients' Account for the period 1 January 1990 to 30 September 1990. The report stated that on the dissolution of the firm on 30 September 1990, the appellant took some of the files while Margaret Yeo took other files. It also stated that the former partners had not complied with the Solicitors' Account Rules, 1978. As at 1 January 1990 numerous clients' accounts were overdrawn amounting to RM1,000,648.61. The report concluded as follows:

> On completion of the audit examination of the accounting records of the abovestated firm and having enumerated the deficiencies and anomalies in the accounting system, I endeavoured to effect a reconciliation of the clients' ledger balances with the bank balances as at 30 September 1990 resulting in a total deficiency in the clients' accounts of RM705,091.89.

The Bar Council was shocked to see this report as the apparent deficiency in the accounts had risen tremendously from RM341,095.30 to RM705,091.89.

The Bar Council asked both the appellant and Margaret Yeo to explain how the short fall came about so as to enable the Bar Council to consider whether or not to issue their Sijil Annual for 1994.

The appellant could not offer any explanation as he said he had left the firm in 1990. He asked to

meet the Sijil Annual Committee which agreed, and the meeting was held on 16 February 1994. The Chairman of the committee explained that unless the appellant could produce a clean Accountant's Report, the Bar Council would not issue the Sijil Annual to the appellant for 1994. The appellant pleaded with the Bar Council to give him an exemption under r. 6 of the Accountant's Report Rules, 1978, but the appellant's case did not appear to fall under any of the conditions specified in r. 6 which would enable the exemption to be granted. The fact that the Sijil Annual was issued for 1992 and 1993 should not be treated as an exemption under r. 6 because the sijils were issued pending the completion of audit and submission of a clean report by the accountant for the period 1 January 1990 to 30 September 1990.

The evidence shows that the Bar Council had sent to every member of the Bar including the appellant a circular titled "Application for Sijil Annual" on 4 January 1985, which reads:

> Law firms may have branches. Obviously a partner of the main office would also be a partner of the branch and vice-versa. In making your application for the Sijil Annual the Accountant's Certificate of the main office as well as the branches will have to be submitted.
>
> Some members have argued that they are partners of branch office only and not the main office or *vice-versa* and therefore not required to submit the Accountant's Certificate in respect of offices where they claimed they do not have any interest. Such contention is not acceptable.
>
> The Bar Council hereby notify you that the above rule would [be] strictly observed when considering applications for the Sijil Annual 1986 and non-compliance will result in your application being rejected.

We agree with the views expressed by the Bar Council that an advocate and solicitor is in a position of a trustee *vis-a-vis* his client's money and must therefore produce a clean Accountant's Report in respect of all monies handled by any office of his partnership during any period which he is a partner. The Bar Council is not concerned with the internal financial and other arrangements between partners *inter-se*. It is up to every partner to ensure that the partnership accounts are in order at all times, in particular before leaving the partnership or before the partnership is wound up.

In the High Court and before us the appellant's learned Counsel argued that under s. 32 of the Act the Bar Council cannot insist on a clean Accountant's Report. So long as an Accountant's Report is submitted together with the application which complies with s. 32(2) of the Act, the Bar Council must issue the Sijil Annual to the applicant. If the Accountant's Report shows that clients' monies had not been accounted for, the Bar Council should apply *ex-parte* under s. 88A of the Act to the Chief Justice for an order suspending such advocate and solicitor from practice until further order. The Bar Council cannot refuse to issue the Sijil Annual because this would amount to suspending the advocate and solicitor concerned from practice. The learned Counsel submitted that the power to suspend is given only to the Chief Justice. For ease of reference we quote the relevant provisions of ss. 32 and 88A of the Act -

32. Issue of Sijil Annual.

(1) Subject to this section and ss. 33 and 34, the Bar Council shall at any time after the month of June in the preceding year issue a Sijil Annual to an advocate and solicitor within twenty-one days of the receipt of an application under subsection (2) if:

(a) the Bar Council is satisfied that the application complies with that subsection and any rules made under this section;
(b) xxx xxx xxx xxx xxx
(c) the advocate and solicitor has delivered or is exempted from delivering an accountant's report in accordance with s. 79;
(d) xxx xxx xxx xxx xxx
(e) xxx xxx xxx xxx xxx

88A. Suspension of advocate and solicitor.

1. Where an advocate and solicitor:

(a) has been found guilty by a court of law of any offence involving dishonesty, misuse of his client's moneys or dishonesty towards a client or in respect of any property belonging to a client;
(b) xxx xxx xxx xxx xxx
(c) in respect of whom a complaint has been made to the Bar Council concerning any dishonest act or acts committed by him in his capacity as an advocate and solicitor;

and the Bar Council considers that it would be in the public interest or in the interest of his clients or of the profession that such advocate

and solicitor be suspended from practice, the Bar Council may apply by summons to the Chief Justice *ex parte* for an order suspending such advocate and solicitor from practice until further order.

We are of the view that s. 32 of the Act imposes a duty on the Bar Council to process and scrutinise every application for a Sijil Annual. It is the Bar Council's paramount duty to ensure that only an honest, trustworthy, fit and proper advocate and solicitor should be allowed to practise. Any act of dishonesty on the part of an advocate and solicitor would bring the Bar Council and the legal profession into disrepute. The issuance of a Sijil Annual by the Bar Council is its recommendation to the Registrar that such advocate and solicitor is a fit person to be issued a Practising Certificate under s. 29 of the Act. If the Bar Council finds that an advocate and solicitor has failed to keep proper accounts of all monies received by his firm and therefore he cannot deliver a clean Accountant's Report, the Bar Council is entitled to refuse to issue a Sijil Annual and consequently will not recommend to the Registrar for the issuance of a Practising Certificate to the advocate and solicitor concerned. It is, therefore, clearly misconceived to interpret the role of the Bar Council as merely a rubber-stamping process, it having no discretion to refuse to issue a Sijil Annual in circumstances where clearly it should not be issued in the public interest. To agree with the appellant's argument would render s. 34 **otiose** in its application to s. 32, bearing in mind that s. 32 is expressly subject to s. 34.

34. Applicant to apply to Court.

(1) An advocate and solicitor who is required to make an application under this section or any advocate and solicitor who is dissatisfied with the refusal, neglect or delay in the issue to him of a Sijil Annual may apply to a Judge by originating summons for an order directing the Bar Council to issue him with a Sijil Annual.

The appellant's application to the High Court has been filed under s. 34 of the Act and the High Court has refused to direct the Bar Council to issue the Sijil Annual.

The fact that the Bar Council had issued Sijils Annual to the appellant for the years 1992 and 1993 does not mean that the Bar Council was satisfied with the Accountant's Report for the period 1 January 1990 to 30 September 1990. As earlier stated, the Bar Council did so to enable the appellant to continue practising while the firm's accounts were being audited. If, therefore, the Bar Council has erred, it has done so in favour of the appellant. On the facts, we are of the view that the Bar Council had acted fairly in this case by refusing to issue the Sijil Annual to the appellant for the year 1994. The appellant must submit an Accountant's Report showing that he had kept his accounts in accordance with the Solicitor's Account Rules, 1978. The Bar Council was also correct in refusing to give an exemption from delivery of an Accountant's Report under r. 6 of the Accountant's Report Rules, 1978 simply because the appellant could not establish that his case comes within any of the matters enumerated under paragraph (2) of that r. 6. We also agree with the Bar Council that this is not a proper case to grant an exemption under rule 6 because the deficiency in the clients' accounts of RM705,091.89 is quite substantial, notwithstanding that no clients of the appellant's former firm had made any complaint.

We, therefore, dismiss this appeal with costs.